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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,907	07/11/2001	Veronique Guillou	210231US0	7859

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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 12/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

BEST AVAILABLE COPY

Office Action Summary

Application N .

09/901,907

Applicant(s)

GUILLOU ET AL.

Examiner

Gina C. Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Continued Prosecution Application

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 28, 2002 has been entered. Claims 1-22 are pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claim 1-6, 10-15, and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mottram (Poucher's Perfumes, Cosmetics and Soaps, 1999) in view of Derian et al. (US 6262130 B1).

Mottram teaches a traditional clear gel shampoo comprising 35 % by weight of sodium lauryl sulfate and 1.5 % of cocodiethanolamide. See col. 189. See instant claims 5, 10, and 11. The reference also teaches on p. 191 that 0.5 % of polyquaternium 10 is added to formulate a conditioning shampoo. See instant claims 12-16(3). While the disclosed formula therein employs betaine and sarcosinate surfactants, the reference goes on to teach that "recent studies reveal that the polyquaternium need not be supported by the betaine derivative or sarcosinate" to produce a hair conditioning benefit. Methyl cellulose, a viscosity modifier, is used. See

instant claims 17 and 18. The method of using the shampoo composition is inherent in the nature of the composition. See instant claims 19-22. Mottram fails to teach an anionic phosphate surfactant.

Derian teaches that alkyl phosphate ester salts such as potassium dodecyl phosphate provides solubility, foaming ability, and detergency increase, while reducing skin irritation which is common in using other anionic surfactants such as alkyl sulfates. See col. 1, line 19 – col. 2, line 55. The reference also teaches that the surfactant produces transparent composition. See Examples.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the conventional transparent shampoo formulation shown in Mottram on p. 189 by adding the polyquaternium as motivated by the teaching on p. 191 of the reference because of the expectation of successfully producing a composition that also provides hair conditioning effects. The skilled artisan would have been further motivated to replace the sodium lauryl sulfate in the formula with the phosphate surfactants as suggested by Derian because of the expectation to successfully producing a more mild composition which reduces skin irritation.

While the amount of the phosphate surfactant as recited in instant claim 6 is not specifically taught, generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. See MPEP § 2144.05. Since the combined teachings of the Mottram and Derian references suggest that about 35 % of the anionic phosphate surfactants can be used in place of the sulfate surfactant in Mottram,

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examiner views that the skilled artisan would have discovered the optimum or workable ranges by routine experimentation. Lowering the concentration of the phosphate surfactant also is viewed economically advantageous from the perspective of a manufacturer.

2, Claims 7-9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mottram and Derian as applied to claims 1-6, 10-15, and 17-23 above, and further in view of Schelges et al. (US 6391834 B1).

Mottram and Derian, discussed above, fail to teach the nonionic surfactants recited in the instant claims.

Schelges teach that alkyl polyglucosides are well known deterative nonionic surfactants and commercially available, suitable for skin cleansing or shampoo formulation. See col. 2, line 50 – col. 3, line 4. See col. 3, line 61 – col. 4, line 5. The recited foam height of the alkyl polyglucosides is viewed as an inherent property of the compound itself.

It is generally considered prima facie obvious to combine two compounds each of which is taught by the prior art to be useful for the same purpose, in order to form a composition which is to be used for the very same purpose. The idea for combining them flows logically from their having been used individually in the prior art. See In re Kerhoven, 626 F.2d 848, 205 USPQ 1069 (CCPA 1980). As shown by the recited teachings, the instant claims define nothing more than the concomitant use of two

nonionic surfactants conventionally used in shampoo formulations. It would follow that the recited claims define prima facie obvious subject matter.

Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shampoo composition of the combined references by substituting the cocodiethanolamide in Mottram with the alkylpolyglucosides as motivated by Schelges, because of the expectation of successfully producing a shampoo composition with similar properties.

Response to Arguments

Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

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Gina C. Yu
Patent Examiner
December 15, 2002



SREENI PADMANABHAN
PRIMARY EXAMINER

12/16/12